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| 09/900,319      | 07/06/2001  | Priscilla M. Tramontana | PPC-800             | 6598             |

27777 7590 08/21/2003  
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| EXAMINER |
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DELACROIX MUIRHEI, CYBILLE

| ART UNIT | PAPER NUMBER |
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1614

DATE MAILED: 08/21/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/900,319

Applicant(s)

TRAMONTANA, PRISCILLA M.

Examiner

Cybille Delacroix-Muirheid

Art Unit

1614

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6-11 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-11 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Detailed Action***

Claims 20-23 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodiguel, WO 97/38738 in view of Iyer et al., 5,939,050 and Romano et al. WO 97/25106.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Response to Amendment***

The following is responsive to Applicant's amendment received April 1, 2003.

Claims 1-5 and 12-19 are cancelled. No new claims are added. Claims 6-11 and 20-23 are currently pending.

Applicant's Information Disclosure Statement received April 1, 2003 has been considered. Please refer to Applicant's copy of the 1449 submitted herewith.

The previous rejection of claim 6 under 35 USC 112, paragraph 2, set forth in paragraphs 2-3 of the office action mailed Nov. 25, 2002 is **withdrawn** in view of Applicant's amendment and the remarks contained therein.

The previous rejection of claim 19 under 35 USC 102(a) set forth in paragraphs 4-5 of the office action mailed Nov. 25, 2002 is **withdrawn** in view of Applicant's amendment canceling claim 19.

***Claim Objection(s)***

Claims 6, 20, 22, 23 are objected to because of the following informalities: claims 6, 20, 22, 23 are dependent upon cancelled claim 19. Appropriate correction is required.

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Applicant's arguments traversing the previous claims rejection under 35 USC 103(a), set forth in paragraphs 6-8 of the office action mailed Nov. 25, 2002 have been considered but are, respectfully, not found to be persuasive.

Said rejection is maintained essentially for the reasons given previously in the office action mailed Nov. 25, 2002 with the following additional comment:

It is Applicant's position that the prior art does not disclose or fairly suggest the claimed invention. Specifically, Applicant argues that Bodiguel purports to disclose a sanitary napkin containing one or more antiseptics of natural origin. Such antiseptics may be chosen from essential oils as geranium, lavender or citronella. Furthermore, the sanitary pad may contain 0.2 mg to 20 g of antiseptic.

Concerning the Iyer and Romano references, the Applicant contends that these references do not cure the deficiencies of Bodiguel. Both these references disclose a combination of essential oils and other required agents for effective disinfection. Neither of the references discloses the use of essential oils, alone, as effective agents. Additionally, the Examiner has not met her burden of establishing obviousness. The Examiner has not provided factual evidence that Bodiguel discloses the claimed sanitary napkin. Nor has the Examiner provided Applicant with any evidence that if the anti-microbial and aromatic essential oils disclosed by Romano and Iyer were combined with Bodiguel, one of ordinary skill in the art would have been motivated to make the invention as claimed.

Said arguments have been considered but are not found to be persuasive.

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With respect to Applicant's argument that both Iyer and Romano disclose a combination of essential oils with other agents for an anti-microbial effect, please note that Applicant's claims recite "comprising" language. According to MPEP 2111.03, the transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); Moleculon Research Corp. v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts"). In this case, because the claims recite "comprising" language, it does not exclude the additional required agents in Romano and Iyer.

Additionally, Applicant's arguments that the references disclose essential oils in combination with other agents, and that there is no teaching of the use of essential oils alone as active agents have been noted. However, these arguments do not negate the fact that the references suggest that each essential oil independently has antimicrobial and aromatic properties. In other words, the references do not teach that the essential oils obtain anti-microbial properties only upon combination with other agents.

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Finally, in addressing the argument that the Examiner has failed to provide evidence that one of ordinary skill in the art would have been motivated, from the teachings of the references, to arrive at the claimed invention, the Examiner respectfully submits that "obviousness is a legal conclusion based on facts." Please see Panduit Corp. v. Dennison Manufacturing Co., 1 USPQ 2d 1593, 1595 (Fed. Cir. 1987). Based on the facts disclosed by the prior art, the Examiner respectfully maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sanitary napkins of Bodiguel to include the antimicrobial and aromatic essential oils disclosed by Iyer and Romano because Iyer and Romano suggest that such essential oils have a pleasant odor and are effective antimicrobials and one of ordinary skill in the art would reasonably expect the resulting sanitary napkins to have antiseptic/antimicrobial properties as well as to suppress or eliminate any malodors associated with the use of a sanitary napkin. Such a modification would have been motivated by the reasonable expectation that the resulting sanitary napkins, during use, would prevent unwanted microbial growth while simultaneously providing pleasant aromas.

It is for these reasons that the rejection is maintained.

### ***Conclusion***

Claims 6-11, 20-23 stand rejected.

Applicant's amendment necessitated the new claim objection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

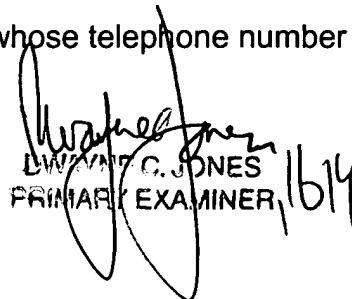
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is 703-306-3227. The examiner can normally be reached on Tue-Thur. from 8:30 to 6:00. The examiner can also be reached on alternate Mondays .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725 The fax phone number for the organization where this application or proceeding is assigned is 703-308-7924.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

CDM

August 13, 2003

  
DWYANE C. JONES  
PRIMARY EXAMINER 1614